In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 233

PUTNAM TOOL COMPANY, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims is reported at 147 F. Supp. 746.

JURISDICTION

The decision of the Court of Claims was entered January 16, 1957. A petition for reconsideration, timely filed, was denied on April 3, 1957 (R. 28). The petition for a writ of certiorari was filed June 28, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1255 (1).

QUESTION PRESENTED

Whether petitioners, having paid to the United States renegotiation indebtedness as determined by the War Contracts Price Adjustment Board, together

with interest at six percent per annum, can now recover a portion of the interest paid on the ground that it was excessive.

STATEMENT

On February 27, 1946, petitioners were advised by the War Contracts Price Adjustment Board of its determination that they had realized excessive profits for fiscal year 1943, after adjustment for taxes, in the amount of $468,175 (Pet. 4a). The Board's letter demanded payment of that sum, and stated that interest at six percent would accrue thereon beginning March 14, 1946 (Pet. 4a). Petitioners on May 23, 1946, filed suit in the Tax Court for a redetermination of their asserted excessive profits (Pet. 4a), and the United States on July 30, 1947, filed a suit in a district court to collect the renegotiation indebtedness (Pet. 4a). Subsequently, while both of these actions were pending, the United States in 1947 and 1948 set off against the renegotiation indebtedness three small sums otherwise due petitioners; on May 15, 1950, petitioners paid the Government $150,000 on the indebtedness; and on June 2, 1950, petitioners paid the Government $434,176.10 as full payment of the remaining principal of the indebtedness, together with accrued interest at six percent (Pet. 4a). The payment of June 2, 1950, was accompanied by a letter in which petitioners stated (Pet. 4a):

> There is tendered herewith a certified check in the amount of $434,176.10 in full payment for all liability of the Putnam Tool Company for renegotiation liability, together with interest thereon as of this date. This payment is

> not made in recognition of the correctness of the determination nor in derogation of our right to continue to contest the validity of the determination if we so desire in the Tax Court of the United States.

By stipulation, the Government's suit in the district court was dismissed on June 2, 1950, and the Tax Court proceeding on June 13, 1950 (Pet. 4a–5a).

Some two years later, petitioners for the first time claimed that they should have paid interest at the rate of four percent, rather than at six percent, and, after unsuccessful attempts to obtain a refund of the alleged overpayment from the administrative agencies, filed this suit in the Court of Claims on April 30, 1956. The Court of Claims, on January 16, 1957, granted the Government's motion to dismiss (Pet. 3a). The court held that petitioners' payment to the Government of six percent interest was voluntary and therefore could not be recovered in a later suit (Pet. 6a). Rejecting petitioners' claim that the payment was under compulsion because it was made in order to stop the running of interest, the court pointed out that "The fact that interest will or may accrue upon a claim, if it is not paid, is not legal duress which will make its payment recoverable" (Pet. 7a).

Finally, the court distinguished the situation from that in *Eversharp, Inc.* v. *United States*, 129 C. Cls. 772 and No. 593–53, decided July 12, 1956, where it had held that the War Contracts Price Adjustment Board was not authorized to promulgate a regulation fixing six percent interest upon renegotiation debts, and accordingly had reduced the interest upon the

contractor's liability to four percent, which it found to be reasonable in the circumstances. The court pointed out that, in *Eversharp,* the contractor's payment of six percent interest was made under an express agreement with the Government that it could later sue to recover the payment, but that petitioners here had made no such arrangement. The opinion noted that petitioners' letter of June 2, 1950, attempting to reserve their right to pursue their pending Tax Court suit "had nothing to do with determining the correct rate of interest" (Pet. 7a), and that even the right to continue the Tax Court proceeding was voluntarily abandoned a few days later when that suit was dismissed by stipulation (Pet. 7a).

ARGUMENT

Petitioners made a voluntary payment of interest at six percent to the United States, and cannot now maintain a suit for reimbursement of a portion of that money. Recovery is barred, not only by the general rule that one cannot recover money voluntarily paid under mistake of law to satisfy a *bona fide* claim, but also because such claims are based on quasi-contract and are therefore not within the jurisdiction of the Court of Claims. Accordingly, petitioners' suit was properly dismissed.

1. It is well settled that the federal courts have no jurisdiction to order repayment of money voluntarily paid to the United States, even if such payment was made under a mistake of law. *United States* v. *Edmondston,* 181 U. S. 500; *Baltimore Mail S. S. Co.* v. *United States,* 76 F. 2d 582 (C. A. 4), certiorari

denied, 296 U. S. 595.[1] Such claims are based on the theory of quasi-contract, or contract implied in law, and thus beyond the jurisdiction conferred upon the federal courts by the Tucker Act (28 U. S. C. 1346 (a) (2)). *Alabama* v. *United States*, 282 U. S. 502; *United States* v. *Minnesota Mutual Investment Co.*, 271 U. S. 212; *Baltimore Mail S. S. Co.* v. *United States, supra.*[2]

Even apart from the jurisdictional bar, it is clear that petitioners have no substantive right to recovery for their voluntary payment. It is accepted law that "a person who, induced thereto solely by a mistake of law, has conferred a benefit upon another to satisfy in whole or in part an honest claim of the other to the performance given, is not entitled to restitution."

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[1] This Court "has distinctly and constantly recognized the doctrine that where there has been a voluntary payment of money, using that term in its customary legal sense, the money so paid cannot be recovered, and also that that doctrine applies to cases in which one of the parties is the government, and that money thus voluntarily paid to the government cannot be recovered." *United States* v. *Edmondston*, *supra*, 181 U. S. at 510–511.

[2] In the *Baltimore Mail* case, as here, suit was brought to recover alleged overpayment of interest to the United States. In holding that the district court had no jurisdiction under the Tucker Act to entertain the action, the Fourth Circuit pointed out (76 F. 2d at 584):

"It is not a suit to enforce a liability created by statute, nor is it a suit upon a contract either express or implied in fact. It is a suit to recover interest paid the United States on the theory that such interest was unlawfully exacted of plaintiff; and proceeds solely upon the theory that there is a duty imposed by law to repay the monies thus wrongfully collected. In other words, recovery is sought upon the theory of quasi contract, or contract implied in law."

Restatement, Restitution (1937) § 45; See 5 Williston, *Contracts* (1937) § 1582.[3] Hence petitioners' claim was properly dismissed both on substantive and jurisdictional grounds.

2. Petitioners' payment of their renegotiation liability was clearly voluntary. They were under no legal compulsion to pay the amount determined by the War Contracts Price Adjustment Board, being entitled under Section 403 (c) of the Renegotiation Act (50 U. S. C. App. 1191 (c)) to a *de novo* redetermination thereof in the Tax Court. In fact, they had already commenced an action for such redetermination when they decided instead to pay to the Board in full, including accrued interest at six percent. The collection suit in the district court had not reached judgment. Payment under such conditions is held to be "voluntary" as a matter of law, and hence not recoverable in a later action. See, e. g., *Wourduck* v. *Becker*, 55 F. 2d 840 (C. A. 8).[4]

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[3] Section 45 of the Restatement illustrates this principle with the following highly pertinent example (Illustration 3, p. 185):

"3. Five per cent. yearly is fixed by statute as the amount payable as interest upon debts, unless the parties have specified otherwise. A owes B a liquidated sum and in settlement thereof pays B interest at the rate of 7 per cent., both parties erroneously believing that to be the amount fixed by statute. A is not entitled to restitution from B."

[4] As the *Wourduck* opinion points out (55 F. 2d at 842):

"The general rule is that, where an unfounded or illegal demand is made upon a person, and the law furnishes him adequate protection against it, or gives him an adequate remedy, and, instead of taking the protection the law gives him or the remedy it furnishes, he pays what is demanded, such pay-

The fact that petitioners made payment in order to avoid continued accrual of interest upon their obligation or to avoid the expense and inconvenience of further proceedings does not, of course, constitute duress. To establish duress giving a right to restitution, the payor must have "reasonably believed that if the payment was not made the means taken to enforce collection of the tax or assessment would subject him to serious risk of imprisonment or of the loss of possession of his things or of other substantial loss." *Restatement, Restitution,* § 75.[5] Petitioners here were under no such coercion, but made a "purely voluntary" payment, based upon a mistake which "was mutual and one of law * * *" *United States* v. *Edmondston, supra,* 181 U. S. at 515; accordingly, their attempt to recover a portion of this payment was properly denied.

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ment is deemed to be a voluntary, and not a compulsory payment."

Moreover, recovery of an illegal tax, even if paid under duress, is permissible "only provided that the taxpayer was conscious of its invalidity. If he believed the tax valid, his payment is under mistake of law, and, therefore, 'voluntary.'" Williston, *supra,* § 1619A; see *Restatement of Restitution* § 75. Petitioners, of course, never contended that the rate of interest on their obligation was improper and even their attempted reservation of the right to contest the principal assessment in the Tax Court was voluntarily relinquished by stipulation (Pet. 7a).

[5] Thus, in the two cases upon which petitioners rely, duress was in fact shown: In *Swift Co.* v. *United States,* 111 U. S. 22, the taxpayer, a large manufacturer, had no alternative but "to submit to an illegal exaction, or discontinue its business." 111 U. S. at 30; similarly, in *United States* v. *Emery, Bird, Thayer Realty Co.,* 237 U. S. 28, payment was expressly found to have been made "under duress and protest." 237 U. S. at 31.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

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